

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 340

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO CERTAIN INSURANCE AND THE STATE INSURANCE FUND; TO PROVIDE LEGISLATIVE INTENT; REPEALING SECTION 72-915, IDAHO CODE, RELATING TO DIVIDENDS; AMENDING CHAPTER 9, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-928A, IDAHO CODE, TO PROVIDE THAT A PUBLIC CORPORATION MAY INSURE AGAINST LIABILITY FOR COMPENSATION WITH THE STATE INSURANCE FUND OR WITH CERTAIN LICENSED INSURANCE CARRIERS; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. (1) Historically, the State Insurance Fund has exercised its discretion, pursuant to Section 72-915, Idaho Code, to determine the annual amount of dividend, if any, a policyholder would receive.

(2) On March 5, 2009, the Idaho Supreme Court filed its opinion in *Farber v. Idaho State Insurance Fund*, S. Ct. 35144, in which it interpreted Section 72-915, Idaho Code, and ruled that the State Insurance Fund cannot exercise its discretion in determining how much of a dividend to pay to each policyholder because the statute requires a pro rata distribution of dividends to all policyholders. The result of the decision is to require that the State Insurance Fund pay dividends on policies that are not financially profitable, thereby restricting the fund's ability to reduce premiums and pay dividends to profitable policyholders.

(3) In its decision, the Supreme Court stated that, if it has become prudent to alter the statutory language related to the requirements for distribution of dividends, the Legislature is the appropriate venue for such change.

(4) It was the intent of the Legislature in passing House Bill No. 774, As Amended of the Second Regular Session of the Fifty-fourth Idaho Legislature, effective on April 3, 1998, that the State Insurance Fund should operate like an efficient insurance company, subject to regulation under Title 41, Idaho Code, including the dividend provisions set forth in Chapter 28, Title 41, Idaho Code. The retroactive repeal of Section 72-915, Idaho Code, to January 1, 2003, will conform with that intent. Section 73-101, Idaho Code, permits such retroactive repeal as long as it is "expressly so declared" in legislation.

(5) The retroactive repeal of Section 72-915, Idaho Code, will reconcile conflicts in the existing laws governing the State Insurance Fund and will allow the fund, like other insurance companies, to issue dividends pursuant to Chapter 28, Title 41, Idaho Code.

(6) It is the intent of the Legislature that the provisions of this act shall not apply to any action filed in a state or federal court of law in the state of Idaho on or before December 31, 2008, and the provisions of this act shall not apply to the aforementioned case of *Farber v. Idaho State Insurance Fund* as currently pending with respect to those policy holders paying annual premiums of not more than two thousand five hundred dollars (\$2,500).

SECTION 2. That Section [72-915](#), Idaho Code, be, and the same is hereby repealed.

1 SECTION 3. That Chapter 9, Title 72, Idaho Code, be, and the same is hereby amended
2 by the addition thereto of a NEW SECTION, to be known and designated as Section 72-928A,
3 Idaho Code, and to read as follows:

4 72-928A. INSURANCE BY PUBLIC CORPORATION. Notwithstanding the provisions
5 of section 72-928(a), Idaho Code, relating to procuring insurance against liability for
6 compensation, a public corporation may insure against its liability for compensation with
7 the state insurance fund or with any other licensed insurance carrier providing such liability
8 coverage.

9 SECTION 4. An emergency existing therefor, which emergency is hereby declared to
10 exist, Sections 1 and 3 of this act shall be in full force and effect on and after passage and
11 approval, and Section 2 of this act shall be in full force and effect retroactively to January 1,
12 2003.